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DECISION ON GRANT OF FOREST CLEARANCE IN KALAHANDI AND RAYAGADA DISTRICTS OF ORISSA FOR THE PROPOSAL SUBMITTED BY THE ORISSA MINING CORPORATION LTD. (OMC) FOR BAUXITE MINING IN LANJIGARH BAUXITE MINES

I. Brief Background:

On February 28th, 2005, a proposal was forwarded by the State Government of Orissa for the diversion of 660.749 ha of forest land for mining of bauxite ore in favour of the Orissa Mining Corporation (OMC) in Kalahandi and Rayagada districts.

The Forest Advisory Committee (FAC) in the MoE&F met thrice thereafter and recommended “in principle” approval on October 27th, 2007 stipulating certain conditions like concurrent reclamation, minimum tree felling in phased manner and modified wildlife management plan, etc.

Following this the Supreme Court delivered its judgment on 23rd November 2007. In this judgment the Supreme Court issued orders laying down certain conditions that were to be fulfilled by the Company before forest clearance could be granted. One condition laid down was that Sterlite (SIIC) or OMC would be charged with the execution of the project while Vedanta, in all its forms, was not to be involved.

The Supreme Court delivered a second judgement on August 8th, 2008 in which it held:

“For the above reasons and in the light of the Affidavits filed by SIIL, OMCL and State of Orissa, accepting the Rehabilitation Package, suggested in our Order 23.11.07, we hereby grant clearance - to the forest diversion proposal for diversion of 660.749 ha of forest land to undertake bauxite mining on the Niyamgiri Hills in Lanjigarh. The next step would be for MoEF to grant its approval in accordance with law.”[Emphasis Added]

Subsequently, the MoE&F formally issued the “in principle” approval to the state government on December 11th, 2008.



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It also bears mention that the Central Empowered Committee(CEC) of the Supreme Court had submitted its report on this project on September 21st, 2005 in which it expressed the view the diversion of forest land as envisaged should not be permitted. It had also recommended that the environmental clearance granted by the MoE&F for the alumina refinery plant on September 22nd, 2004 be revoked and all work be stopped.

III. Stage-II Examination in the MoE&F:

On August 10th, 2009, the state government applied for **final** clearance to the MoE&F. The FAC considered the matter on November 4th, 2009. In this meeting, the FAC recommended that final clearance be considered only after ascertaining community rights on forest land and after the process for establishing such rights under the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 also known as the Forest Rights Act, 2006 is completed. The FAC also decided to constitute an expert group to carry out a site inspection. Thereafter on January 1st, 2010 a three-member team composed of Dr. Usha Ramanathan a noted expert on tribal issues, Shri Vinod Rishi (Former Director Project Elephant) and Shri J.K. Tiwari (Regional Conservator of Forests, MoE&F Bhubaneshwar), was set up to consider and make recommendations to the MoE&F on the proposal submitted by the Orissa Mining Corporation. The team carried out site visits during the months of January and February 2010 following which it submitted three individual reports to the MoE&F on February 25th, 2010. These reports were made available immediately on www.moef.gov.in. These reports provided valuable field-level information. However they also revealed the need for further detailed examination on various counts and also the need to look upon different issues of relevance in an integrated manner.

On April 16th, 2010, the FAC met to consider these three reports. It recommended that a special committee under the Ministry of Tribal Affairs be constituted to look into the issues relating to the violation of Tribal rights and the settlement of Forest Rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.



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Therefore, on 29th June 2010, keeping in mind the primary responsibility and obligation of the MoE&F itself and also keeping in mind that on April 13th, 2010 the MoE&F and the Ministry of Tribal Affairs had already jointly set up a committee to look into implementation of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), I decided to constitute a team, composed of specialists, which would be charged with looking into (i) settlement of the rights of forest dwellers and the 'Primitive Tribal Groups' under the FRA, 2006; and (ii) Impact on wildlife and biodiversity in the surrounding areas

Accordingly, Dr. Naresh Saxena, Dr. Amita Baviskar, Dr. Promode Kant and Dr. S Parasuraman, all of whom have impeccable professional credentials, were invited to join the Committee. Dr. Saxena is also the Chairman of the joint MoE&F-Ministry of Tribal Affairs Committee, established jointly by the MoE&F and the Ministry of Tribal Affairs to study and assess the impacts of the Scheduled Tribes and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006. Dr. Baviskar is also a member of the FAC. The terms of reference for this Committee were drafted in a manner that would facilitate a holistic, rather than a piecemeal, investigation. The Committee submitted its report to the MoE&F on August 16th, 2010 and the report was made available immediately on www.moef.gov.in.

IV. Salient Findings of the Saxena Committee:

I wish to recall here the main findings of the Saxena Committee that have a bearing on the decision whether or not to grant final Stage-II approval.

IV.I Ecological Costs of Mining

- Mining operations of the intensity proposed in this project spread over more than 7 square km would severely disturb this important wildlife habitat that has been proposed as a part of the Niyamgiri Wildlife Sanctuary.
- More than 1.21 lakh trees would need to be cleared for mining besides many lakh more shrubs and herbal flora.
- Mining in the PML will destroy the valuable 'edge effect' of the grassland-forest landscape and adversely affect wildlife in the area.



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- The grasses are breeding and fawning ground for Four-Horned Antelope (*Tetracerus quadricornis*), Barking Deer (*Muntiacus muntjac*), as well as Spotted Deer (*Axis axis*). A rare lizard, Golden Gecko (*Callodactylodes aureus*), is found on the proposed lease area. The populations of all these species will decline if mining is allowed.
- The value of Niyamgiri hill forests as an important elephant habitat is well recognized by its inclusion in the South Orissa Elephant Reserve. Mining on the scale proposed in this habitat would severely disturb elephant habitats, and threaten the important task of elephant conservation in south Orissa.
- The mining operations in the PML site involves stripping off more than 7 square kilometres of the Niyamgiri hill top which would drastically alter the region's water supply, severely affecting both ecological systems and human communities dependent on this water.

IV.II Human Costs of Mining

- The PML area is intimately linked, by way of economic, religious and cultural ties, to 28 Kondh villages with a total population of 5148 persons. The affected include about 1453 Dongaria Kondh which constitutes 20 per cent of the total population of this tribe.
- If the economic, social and cultural life of one-fifth of the Dongaria Kondh population is directly affected by the mining, it will threaten the well being of the entire community.
- Since the Dongaria and Kutia Kondh are heavily dependent on forest produce for their livelihood, this forest cover loss will cause a significant decline in their economic well-being. Landless Dalits who live in these villages and are dependent upon the Kondh will also be similarly affected.
- Lands that the Dongaria Kondh cultivate lie in close proximity to the PML area. Mining-related activities such as tree-felling, blasting, the removal of soil, road building, and the movement of heavy machinery will deny them access to their lands that they have used for generations.
- These activities will also adversely affect the surrounding slopes and streams that are crucial for their agriculture.

IV.III Violations of the FRA

- It is established beyond any doubt that the area proposed for mining lease (PML) and the surrounding thick forests are the cultural, religious and economic habitat of the Kondh Primitive Tribal Groups. Discouraging and denying the claims of the Primitive Tribal Groups without the due process of law is illegal on the part of district or sub-divisional committees. Since the provisions of the FR Act have not been followed by the state government, and the legitimate and well established rights of the Kondh Primitive Tribe Groups have been deliberately disregarded by the district administration and the state government, the only course of action open before the MoEF is to withdraw the Stage 1 clearance given under FCA for the said area.



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- From the evidence collected by the Committee, we conclude that the Orissa government is not likely to implement the FR Act in a fair and impartial manner as far as the PML area is concerned. Since it has gone to the extent of forwarding false certificates and may do so again in future, the MoEF would be well advised not to accept the contentions of the Orissa government without independent verification. GoI should, therefore, engage a credible professional authority to assist people in filing their claims under the community clause for the PML area with the state administration.
- In sum, the MOEF cannot grant clearance for diversion of forest land for non-forest purposes unless:
 - The process of recognition of rights under the Forest Rights Act is complete and satisfactory;
 - The consent of the concerned community has been granted; and
 - Both points have been certified by the Gram Sabha of the area concerned (which must be that of the hamlet being a Scheduled Area).
- All of these conditions, not any one, must be satisfied. This is irrespective of the fact whether people have filed claims or not. In short, the circular of 3 August, 2009, by the Ministry of Environment and Forests, which lays down these conditions has articulated the correct legal position.
- If mining is permitted on this site it will not only be illegal but it will also:
 - Destroy one of the most sacred sites of the Kondh Primitive Tribal Groups;
 - Destroy more than seven square kilometres of sacred, undisturbed forest land on top of the mountain that has been protected by the Dongaria Kondh for centuries as sacred to Niyam Raja and as essential to preserving the region's fertility;
 - Endanger the self-sufficient forest-based livelihoods of these Primitive Tribal Groups;
 - Seriously harm the livelihood of hundreds of Dalit families who indirectly depend upon these lands through their economic relationship with these Primitive Tribe Groups; and
 - Build roads through the Dongaria Kondh's territories, making the area easily accessible to poachers of wildlife and timber smugglers threatening the rich biodiversity of the hills.



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IV.IV Violation of Forest Conservation Act

- The company is in illegal occupation of 26.123 ha of village forest lands enclosed within the factory premises. The claim by the company that they have only followed the state government orders and enclosed the forest lands within their factory premises to protect these lands and that they provide access to the tribal and other villagers to their village forest lands is completely false. This is an act of total contempt for the law on the part of the company and shows an appalling degree of collusion on the part of the concerned officials.
- For the construction of a road running parallel to the conveyor corridor, the company has illegally occupied plot number 157(P) measuring 1.0 acre and plot number 133 measuring 0.11 acres of village forest lands. This act is also similar to the above although the land involved is much smaller in extent.

IV.V Violation of the Environment Protection Act (EPA)

- The company M/s Vedanta Alumina Limited has already proceeded with construction activity for its expansion project that would increase its capacity six fold from 1 Mtpa to 6 Mtpa without obtaining environmental clearance as per provisions of EIA Notification, 2006 under the EPA. This amounts to a serious violation of the provisions of the Environment (Protection) Act. This expansion, its extensive scale and advanced nature, is in complete violation of the EPA and is an expression of the contempt with which this company treats the laws of the land.

IV.VI Violation of conditions of Clearance under EPA granted to Refinery

- The refinery was accorded clearance under the EPA on the condition that no forest land would be used for the establishment of the refinery. But now it is clearly established that the company has occupied 26.123 ha of village forest lands within the refinery boundary with the active collusion of concerned officials. Hence, the environmental clearance given to the company for setting up the refinery is legally invalid and has to be set aside.

IV.VII Very limited relevance to the expanded Refinery:

- The mining activities in the PML site will have limited relevance to the refinery now under a six fold expansion as the 72 million ton ore deposit here would last only about four years for the increased needs of the expanded refinery. In balance against this are the severe adverse consequences on the primitive tribal people, environment, forests and wildlife that inhabit these forests.



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IV.VIII Overall Conclusion of the Saxena Committee:

- In view of the above, this Committee is of the firm view that allowing mining in the proposed mining lease area by depriving two Primitive Tribal Groups of their rights over the proposed mining site in order to benefit a private company would shake the faith of tribal people in the laws of the land. Since the company in question has repeatedly violated the law, allowing it further access to the proposed mining lease area at the cost of the rights of the Kutia and Dongaria Kondh, will have serious consequences for the security and well being of the entire country.

V. Letter dated August 17th 2010 from the State Government in response to the Saxena Report:

On August 17th, 2010, the state government wrote to the MoE&F expressing certain grievances with the findings of the Saxena Committee and requested an opportunity to be heard before any decision was taken on the Committee's report. A copy of this letter was forwarded by the MoE&F to the members of the Committee to enable them to respond to the charges contained therein. Dr. NC Saxena replied on August 23rd, 2010. Both the letter of the Orissa government and Dr. Saxena's reply are available on www.moef.nic.in. Dr. Saxena that all findings of the Committee were based on direct interactions with the state government officials.

VI. Meeting with Chief Minister, Orissa and State Government Officials:

On August 23rd, 2010, I met with the Chief Minister of Orissa and the Principal Secretary of the State in New Delhi. The Chief Minister told me that since the Supreme Court had already granted "in principle" approval subject to certain conditions and since the state government had already fulfilled those conditions, final approval should now be given by the MoE&F.

Thereafter, on August 24th 2010, I met with a delegation of officers from the Orissa State Government who reiterated the points made by the Hon'ble Chief Minister of Orissa. In addition these officers challenged the Saxena Committee on 5 specific grounds: (i) Impact of Hilltop Mining on Aquifers; (ii) Impact of Mining on Vegetation and biodiversity; (iii) Impact of Mining on Wildlife; (iv) Customary Rights of Primitive Tribal Groups; and (v) The Role of the Gram Sabha and other



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Procedural Issues relating to the implementation of the Forest Rights Act 2006. The State Government officials were also very critical of the Saxena Committee's report for the observations made on their role in the implementation of the Forest Rights Act, 2006.

VII. Basis of Final Decision on Stage-II Clearance

VII.I Clarification from the Attorney General of India

Before a decision on the merits of the case could be taken, there were some questions regarding the role and procedure to be followed by the MoE&F. By virtue of the fact that the Supreme Court in its judgment dated August 8th, 2008 had "granted" clearance to the project, there were doubts raised as to what role that left for the MoE&F to discharge.

By way of abundant caution, on July 19th, 2010, I wrote to the Union Law Minister to solicit the opinion of the Learned Attorney General of India on the matter. Shortly thereafter, on July 20th, 2010, the learned Attorney General submitted his opinion to the Ministry of Law stating, among other things, that the Ministry of Environment and Forests was in no way restricted by the Supreme Court judgment of August 8th, 2008 even if the MoE&F chose to deny the clearance. The learned Attorney General stated that there was "*never any question that the clearance from the Supreme Court was meant to obviate the necessity of obtaining clearance from the Central Government*".

In direct response to my question as to whether the decision of the Supreme Court to grant forest clearance was final and binding or subject to approval and ratification by the MoE&F, the learned Attorney General unambiguously answered in the negative and opined as follows:

"The Moef is bound to apply its own mind and grant independent clearance to the Project. Needless to say, if approval is to be granted then all the terms stipulated by the Supreme Court have to be incorporated. However that question would not arise if it is decided that the approval is not to be granted, for cogent and valid reasons." [Emphasis Added]



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VII.II Observations of the Forest Advisory Committee, dated August 23rd, 2010

On August 20th, 2010, the Saxena Committee's report was placed before the FAC in accordance with Section 3 of the Forest (Conservation) Act, 1980. The FAC noted that:

"The FAC has found compelling and significant evidence of prima facie violations of the following laws: Forest Rights Act, Forest Conservation and the Environmental Protection Act. Any clearance would thus be in contravention of the above legislation (sic)"

The FAC also noted that it has the highest regard for the Hon'ble Supreme Court and is acting strictly in accordance with its ruling dated 23rd November 2007. The FAC's report has recognised and recorded the following violations:

1. Violation of the Scheduled Tribes and Other Tradition Forest Dwellers (Recognition of Forest Rights) Act 2006, popularly known as the Forest Rights Act, 2006:

The FAC has found that there has been a violation of section 3(1)(e) of the Forest Rights Act which relates to the rights of the Primitive Tribal Groups. The FAC found as follows:

"As seen in the report of the Committee, it is apparent that there has been a serious failure to implement these specific provisions of the FRA to protect the culture, livelihood and rights, "including community tenure of habitat and habitation" as specified in the FRA, of people belonging to the Dongaria Kondh and Kutia Kondh tribes which are both PTGs"

Relying on the Saxena Committee's reports the FAC concluded that the Primitive Tribal Groups were not consulted in the process of seeking project clearance.



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2. Violation of the Forest (Conservation) Act 1980:

The FAC has relied on the findings of the Saxena Committee's report stating that M/s Vedanta Alumina Ltd. to whom the bauxite extracted from the Niyamgiri Mines is to be supplied, has illegally enclosed 26.123 hectares of Gram Joqya Jungal (village forest) within premises of an Alumina Refinery set up at Lanjigarh, thereby denying access to the villagers. Similarly for construction of a road running parallel to the conveyer corridor, M/s. Vedanta Alumina Limited has illegally occupied plot number 157 (P) measuring 1.0 acre and plot number 133 measuring 0.11 acres of village forest lands.

3. Violation of the Environment (Protection) Act 1986:

The FAC has found that the project proponent (M/s. Vedanta Alumina Limited) has already proceeded with construction activity for its enormous expansion of its Aluminium refinery project at Lanjigarh to increase its capacity six fold from 1 million tonne per annum (mtpa) to 6 mtpa without obtaining prior and complete Environment Clearance as per provisions of the Environment Impact Assessment (EIA) Notification 2006 under the Environment (Protection) Act, 1986. However, we are informed that 60 per cent of the additional construction has been completed.



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4. Violation of Condition of Clearance Under the Environment (Protection) Act 1986:

The FAC has taken note of the Saxena Committee's findings that certain facts were concealed by the project proponent while seeking environmental clearance. On August 16th, 2004, Vedanta Alumina submitted a proposal for diversion of 58.943 ha. of forest land for setting up a refinery at Lanjigarh and for conveyer belt which included 26.123 ha. of forest land for the refinery and the rest for conveyer belt and a road to the mining site. However, while filing environmental clearance on March 19th, 2003, the company claimed that no forest lands were needed and that there were no Reserved Forest within 10Km of the proposed refinery. Later on learning from the Central Empowered Committee that a proposal for diversion of forest land for setting up of the said refinery is pending before the Ministry, the MoE&F vide notice dated May 23rd, 2005 directed M/s Vedanta that further construction should be undertaken only after getting the requisite clearance under the Forest (Conservation) Act, 1980. Instead of obeying the Orders of the Ministry of Environment the company informed the MoE&F that they did not need the use of 58.943 hectares of forest land. They also continue to claim that the refinery project does not use any forest land. The refinery however, continues to occupy all the lands including the 26.123 hectares of forest land, with the full knowledge of the district administration who have allowed their continued illegal occupation. While the enclosure of village forests is in violation of the law, the incomplete and inaccurate information given by the project proponent is an equally grave matter. The FAC has recommended that this matter be investigated fully by the MoE&F and acted upon as required under law.



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5. Impact on Biodiversity:

The FAC has found that the high ecological and biodiversity values of the Niyamgiri hills upon which the Dongaria Kondh and Kutia Kondh depend will be irretrievably damaged by mining. The FAC has gone on to observe that the area is home to species which are listed in Schedule-I of the Wildlife (Protection) Act, 1972 such as the four-horned antelope. It has concluded that mining on this scale in this ecologically sensitive area will lead to irreversible damage to biodiversity, as well as disruption of the economic and cultural life of the dependent human population.

6. Very Limited Relevance of the Proposed Mining Lease:

The FAC has observed that the mining activity in the proposed mining lease site at Niyamgiri will have limited relevance to the Lanjigarh refinery now under six-fold expansion as the 72 million tonne ore deposit here would last only about four years for the increased needs of the expanded refinery.

7. Questionable sourcing of Bauxite Ore by the Company:

The FAC has expressed concern at the finding of the Saxena Committee that the current expansion plans rely on bauxite being sourced from questionable sources. Given the expansion sought to be undertaken the current supply of bauxite can only fuel the operations of the refinery for four years. The FAC noted it is *“a cause for concern that, as per the report, the bulk of the bauxite ore presently being used by the refinery is being sourced from fourteen mines, eleven of which do not have the requisite environmental clearance as per the latest available information”*.



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8. Recommendations of the FAC dated August 23rd 2010:

In the opinion of the FAC, the Saxena Committee report clearly indicates the lack of diligence in safeguarding the rights of Primitive Tribal Groups (PTGs) in the adjoining forest areas and unless the State Government provides evidence of their serious intent for following observance of due process of law, it appears to the FAC that this is a breach of law.

Based on the above analysis, the FAC has found that this is a fit case for applying the precautionary principle to obviate irreparable damage to the affected people, and recommends for temporary withdrawal of the in-principle/stage-I approval accorded, in accordance with Section-2 of the Forest (Conservation) Act, 1980, by the Ministry of Environment & Forests for diversion of 660.749 ha. forest land in favour of Orissa Mining Corporation Ltd. for bauxite mining in Niyamgiri Hills in Kalahandi and Rayagada districts of Orissa.

The FAC has further advised the Ministry to consider suitable action under the law in respect of the violations pointed out *vis-a-vis* environmental clearance given or under consideration for the aluminium refinery.

Before taking a final decision, the FAC recommended that the MOE&F give an opportunity to the state government to be heard, a process that I have followed including hearing no less a person than the chief minister of the state himself.



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VIII. Factors Dictating Decision on Stage-II Clearance

I have considered three broad factors while arriving at my decision.

1. The Violation of the Rights of the Tribal Groups including the Primitive Tribal Groups and the Dalit Population.

The blatant disregard displayed by the project proponents with regard to rights of the tribals and primitive tribal groups dependant on the area for their livelihood, as they have proceeded to seek clearance is shocking. Primitive Tribal Groups have specifically been provided for in the Forest Rights Act, 2006 and this case should leave no one in doubt that they will enjoy full protection of their rights under the law. The narrow definition of the Project Affected People by the state government runs contrary to the letter and spirit of the Forest Rights Act, 2006. Simply because they did not live on the hills does not mean they have no rights there. The Forest Rights Act, 2006 specifically provides for such rights but these were not recognized and were sought to be denied.

Moreover, the fate of the Primitive Tribal Groups need some emphasis, as very few communities in India in general and Orissa in particular come under the ambit of such a category. Their dependence on the forest being almost complete, the violation of the specific protections extended to their “habitat and habitations” by the Forest Rights Act, 2006 are simply unacceptable.

This ground by itself has to be foremost in terms of consideration when it comes to the grant of forest or environmental clearance. The four-member committee has highlighted repeated instances of violations.



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One also cannot ignore the Dalits living in the area. While they may technically be ineligible to receive benefits under the FRA 2006, they are such an inextricable part of the society that exists that it would be impossible to disentitle them as they have been present for over five decades. The Committee has also said on p.40 of their report that *“even if the Dalits have no claims under the FRA the truth of their de facto dependence on the Niyamgiri forests for the past several decades can be ignored by the central and state governments only at the cost of betrayal of the promise of inclusive growth and justice and dignity for all Indians”*. This observation rings true with the MoE&F and underscores the MoE&F’s attempt to ensure that any decision taken is not just true to the law in letter but also in spirit.

2. Violations of the Environmental Protection Act 1986:

(i) Observations of the Saxena Committee and MOE&F Records:

In addition to its findings regarding the settlement of rights under the FRA 2006, the four-member Committee has also observed, with reference to the environmental clearance granted for the aluminium refinery, on p.7 of its Report dated 16th August 2010 that:

“The company M/s Vedanta Alumina Limited has already proceeded with construction activity for its enormous expansion project that would increase its capacity six fold from 1 Mtpa to 6 Mtpa without obtaining environmental clearance as per the provisions of EIA Notification, 2006 under the EPA. This amounts to a serious violation of the provisions of the Environment(Protection)Act. This expansion, its extensive scale and advanced nature, is in complete violation of the EPA and is an expression of the contempt with which this company treats the laws of the land.”



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I have reviewed the records of the MoE&F and have found no documentation which establishes such activity to have been granted clearance. Nor is there any evidence to suggest that such requirement was waived by the Ministry. The TORs for the expansion of the project from 1 million tonnes to 6 million tonnes were approved in March 2008. No further right has been granted in any form by the Ministry to the project proponents to proceed with the expansion. While any expansion without prior EC is a violation of the EIA Notification/EPA 1986 this, in itself, is not a minor expansion and is therefore a most serious transgression of the EPA 1986.

There also appear to have been other acts of violation that emerge from a careful perusal of the evidence at hand. This is not the first act of violation. On March 19th, 2003 M/s Sterlite filed an application for environmental clearance from the MoE&F for the refinery. In the application it was stated that no forest land is involved in the project and that there was no reserve forest within a radius of 10 kms of the project site.

Thereafter on September 22nd, 2004, environment clearance was granted by the MoE&F for the refinery project. While granting the environmental clearance, the MoE&F was unaware of the fact that the application for forest clearance was also pending since the environmental clearance letter clearly stated that no forest land was involved in the project.

In March 2005, in proceedings before itself, the Central Empowered Committee (CEC) too questioned the validity of the environmental clearance granted by the MoE&F and requested the Ministry to withhold the forest clearance on the project till the issue is examined by the CEC and report is submitted to the Hon'ble Supreme Court.



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(ii) Case before the NEAA by the Dongaria Kondhs:

After the grant of Environment Clearance, the local tribals and other concerned persons including the Dongaria Kondhs challenged the project before the National Environment Appellate Authority (NEAA). [*Kumati Majhi and ors Vs Ministry of Environment and Forest, Srabhu Sikka and ors Vs Ministry of Environment and Forests, R Sreedhar Vs Ministry of Environment and Forests, Prafulla Samantara Vs Ministry of Environment and Forest and ors Appeal No. 18, 19, 20 and 21 of 2009*].

It is brought to my attention that this is the first time that the Dongaria Kondhs have directly challenged the project in any Court of law. The Appeals highlighted the several violations in the Environmental Clearance process. Some of the key charges raised were that the *full Environment Impact Assessment report was not made available to the Public before the public hearing, different EIA reports made available to the public and submitted to the Ministry of Environment and Forests, the EIA conducted was a rapid EIA undertaken during the monsoon months. The matter is reserved for judgment before the NEAA.*

(iii) Monitoring Report of the Eastern Regional Office dated 25th May 2010:

On 25th May 2010, Dr. VP Upadhyay (Director 'S') of the Eastern Regional Office of the Ministry of Environment and Forests submitted his report to the MoE&F which listed various violations in para 2 of the monitoring report. They observed:

- a. *"M/s Vedanta Alumina Limited has already proceeded with construction activity for expansion project without obtaining environmental clearance as per provisions of EIA Notification 2006 that amounts to violation of the provisions of the Environment (Protection) Act."*
- b. *"The project has not established piezometers for monitoring of ground water quality around red mud and ash disposal ponds; thus, the condition no.5 of Specific Condition of the clearance letter is being violated."*



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- c. *“The condition no. ii of General Condition of environmental clearance has been violated by starting expansion activities without prior approval from the Ministry.”*

Furthermore all bauxite for the refinery was to be sourced from mines which have already obtained environmental clearance. The Report listed 14 mines from which Bauxite was being sourced by the project proponents. However out of these 11 had not been granted a mining license while 2 had only received TORs and only 1 had received clearance.

2. Violations under the Forest Conservation Act:

The Saxena Committee has gone into great detail highlighting the various instances of violations under the Forest (Conservation) Act 1980. All these violations coupled with the resultant impact on the ecology and biodiversity of the surrounding area further condemn the actions of the project proponent. Not only are these violations of a repeating nature but they are instances of wilful concealment of information by the project proponent.

IX. The Decision on Stage-II Clearance

The Saxena Committee’s evidence as reviewed by the FAC and read by me as well is compelling. The violations of the various legislations, especially the Forest (Conservation Act) 1980, the Environment (Protection) Act 1986, and the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, appear to be too egregious to be glossed over. Furthermore, a mass of new and incriminating evidence has come to light since the Apex court delivered its judgment on August 8th, 2008. Therefore, after careful consideration of the facts at hand, due deliberation over all the reports submitted and while upholding the recommendation of the FAC, I have come to the following conclusions:



- 1. The Stage II forest clearance for the OMC and Sterlite bauxite mining project on the Niyamgiri Hills in Lanjigarh, Kalahandi and Rayagada districts of Orissa cannot be granted. Stage-II Forest Clearance therefore stands rejected.**
- 2. Since forest clearance is being rejected, the environmental clearance for this mine is inoperable.**
- 3. It appears that the project proponent is sourcing bauxite from a large number of mines in Jharkhand for the one million tonne alumina refinery that are not in possession of valid environmental clearance. This matter is being examined separately.**
- 4. Further, a show-cause notice is being issued by the MOE&F to the project proponent as to why the environmental clearance for the one million tonnes per annum alumina refinery should not be cancelled.**
- 5. A show-cause notice is also being issued to the project proponent as to why the terms of reference (TOR) for the EIA report for the expansion from one million tonnes to six million tonnes should not be withdrawn. Meanwhile, the TOR and the appraisal process for the expansion stands suspended.**

Separately the MoE&F is in the process of examining what penal action should be initiated against the project proponents for the violations of various laws as documented exhaustively by the Saxena Committee.



On the issues raised by the Orissa State Government, I must point out that while customary rights of the Primitive Tribal Groups are not recognised in the National Forest Policy, 1988 they are an integral part of the Forest Rights Act, 2006. An Act passed by Parliament has greater sanctity than a Policy Statement. This is apart from the fact that the Forest Rights Act came into force eighteen years after the National Forest Policy. On the other points raised by the State Government officials, on the procedural aspects of the Forest Rights Act, 2006, I expect that the joint Committee set up by the MoE&F and the Ministry of Tribal Affairs would give them due consideration. The State Government officials were upset with the observations made by the Saxena Committee on their role in implementing the Forest Rights Act, 2006. Whether State Government officials have connived with the violations is a separate issue and is not relevant to my decision. I am prepared to believe that the State Government officials were attempting to discharge their obligations to the best of their abilities and with the best of intentions. The State Government could well contest many of the observations made by the Saxena Committee. But this will not fundamentally alter the fact that serious violations of various laws have indeed taken place.

The primary responsibility of any Ministry is to enforce the laws that have been passed by parliament. For the MoE&F, this means enforcing the Forest (Conservation) Act, 1980, the Environmental (Protection) Act, 1986, the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and other laws. It is in this spirit that this decision has been taken.

Finally, in view of the enormous interest and concern that has been generated both nationally and internationally, I feel it is incumbent on me to make this final decision available to the public in full. All supporting documentation is also being made available on www.moef.gov.in.

Jairam Ramesh
MoS (I/C), Environment & Forests,
Government of India

August 24th, 2010